

## Senate Bill No. 2165

### CHAPTER 807

An act to amend Sections 13263.3 and 13385 of the Water Code, relating to water.

[Approved by Governor September 28, 2000. Filed  
with Secretary of State September 28, 2000.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 2165, Sher. Waste discharge requirements.

(1) The Porter-Cologne Water Quality Control Act prescribes certain civil penalties, including specified mandatory minimum penalties, for violations of specified waste discharge requirements set forth in that act or the Clean Water Act.

This bill would revise these provisions. The bill would prescribe circumstances under which the mandatory minimum penalty requirements would not apply. Certain exceptions would remain in effect only until January 1, 2002. The bill would require the assessment of a mandatory minimum penalty of \$3,000 for the first serious violation, as defined, and each additional serious violation in any period of 6 consecutive months, as defined, except that if no serious violation has occurred in the prior 6 months, the bill would authorize the State Water Resources Control Board or a regional water quality control board, in lieu of assessing the penalty applicable to the first serious violation, to require the discharger to spend an amount equal to the penalty for a supplemental environmental project or to develop a pollution prevention plan.

The bill would also require the assessment of a mandatory minimum penalty of \$3,000 for 4 or more violations of prescribed waste discharge requirements that occur in any period of 6 consecutive months, except as specified.

(2) The act authorizes the state board, a regional board, or a publicly owned treatment works to require a discharger to complete and implement a pollution prevention plan if certain requirements are met.

This bill would extend that authority to those public entities if a discharger is subject to a cease and desist order or a time schedule order.

*The people of the State of California do enact as follows:*

SECTION 1. Section 13263.3 of the Water Code is amended to read:

13263.3. (a) The Legislature finds and declares that pollution prevention should be the first step in a hierarchy for reducing pollution and managing wastes, and to achieve environmental stewardship for society. The Legislature also finds and declares that pollution prevention is necessary to support the federal goal of zero discharge of pollutants into navigable waters.

(b) (1) For the purposes of this section, “pollution prevention” means any action that causes a net reduction in the use or generation of a hazardous substance or other pollutant that is discharged into water and includes any of the following:

(A) “Input change,” which means a change in raw materials or feedstocks used in a production process or operation so as to reduce, avoid, or eliminate the generation of pollutants discharged in wastewater.

(B) “Operational improvement,” which means improved site management so as to reduce, avoid, or eliminate the generation of pollutants discharged in wastewater.

(C) “Production process change,” which means a change in a process, method, or technique that is used to produce a product or a desired result, including the return of materials or their components for reuse within the existing processes or operations, so as to reduce, avoid, or eliminate the generation of pollutants discharged in wastewater.

(D) “Product reformulation,” which means changes in design, composition, or specifications of end products, including product substitution, so as to reduce, avoid, or eliminate the generation of problem pollutants discharged in wastewater.

(2) For the purposes of this section, “pollution prevention” does not include actions that merely shift a pollutant in wastewater from one environmental medium to another environmental medium, unless clear environmental benefits of such an approach are identified to the satisfaction of the state board, the regional board, or POTW.

(c) For the purposes of this section, “discharger” means any entity required to obtain a national pollutant discharge elimination system (NPDES) permit pursuant to the Clean Water Act (33 U.S.C. Sec. 1251 et seq.), or any entity subject to the pretreatment program as defined in Part 403 (commencing with Section 403.1) of Subchapter N of Chapter 1 of Part 403 of Title 40 of the Code of Federal Regulations.

(d) (1) The state board, a regional board, or a POTW may require a discharger subject to its jurisdiction to complete and implement a pollution prevention plan if any of the following apply:

(A) A discharger is determined by the state board to be a chronic violator, and the state board, a regional board, or the POTW determines that pollution prevention could assist in achieving compliance.



(B) The discharger significantly contributes, or has the potential to significantly contribute, to the creation of a toxic hot spot as defined in Section 13391.5.

(C) The state board, a regional board, or a POTW determines pollution prevention is necessary to achieve a water quality objective.

(D) The discharger is subject to a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300 or 13308.

(2) A pollution prevention plan required of a discharger other than a POTW pursuant to paragraph (1) shall include all of the following:

(A) An analysis of one or more of the pollutants, as directed by the state board, a regional board, or a POTW, that the facility discharges into water or introduces into POTWs, a description of the sources of the pollutants, and a comprehensive review of the processes used by the discharger that result in the generation and discharge of the pollutants.

(B) An analysis of the potential for pollution prevention to reduce the generation of the pollutants, including the application of innovative and alternative technologies and any adverse environmental impacts resulting from the use of those methods.

(C) A detailed description of the tasks and time schedules required to investigate and implement various elements of pollution prevention techniques.

(D) A statement of the discharger's pollution prevention goals and strategies, including priorities for short-term and long-term action.

(E) A description of the discharger's existing pollution prevention methods.

(F) A statement that the discharger's existing and planned pollution prevention strategies do not constitute cross media pollution transfers unless clear environmental benefits of such an approach are identified to the satisfaction of the state board, the regional board, or the POTW, and information that supports that statement.

(G) Proof of compliance with the Hazardous Waste Source Reduction and Management Review Act of 1989 (Article 11.9 (commencing with Section 25244.12) of Chapter 6.5 of Division 20 of the Health and Safety Code) if the discharger is also subject to that act.

(H) An analysis, to the extent feasible, of the relative costs and benefits of the possible pollution prevention activities.

(I) A specification of, and rationale for, the technically feasible and economically practicable pollution prevention measures selected by the discharger for implementation.

(3) The state board or a regional board may require a POTW to complete and implement a pollution prevention plan that includes all of the following:

(A) An estimate of all of the sources of a pollutant contributing, or potentially contributing, to the loading of that pollutant in the treatment plant influent.

(B) An analysis of the methods that could be used to prevent the discharge of the pollutants into the POTW, including application of local limits to industrial or commercial dischargers regarding pollution prevention techniques, public education and outreach, or other innovative and alternative approaches to reduce discharges of the pollutant to the POTW. The analysis also shall identify sources, or potential sources, not within the ability or authority of the POTW to control, such as pollutants in the potable water supply, airborne pollutants, pharmaceuticals, or pesticides, and estimate the magnitude of those sources, to the extent feasible.

(C) An estimate of load reductions that may be attained through the methods identified in subparagraph (B).

(D) A plan for monitoring the results of the pollution prevention program.

(E) A description of the tasks, cost, and time required to investigate and implement various elements in the pollution prevention plan.

(F) A statement of the POTW's pollution prevention goals and strategies, including priorities for short-term and long-term action, and a description of the POTW's intended pollution prevention activities for the immediate future.

(G) A description of the POTW's existing pollution prevention programs.

(H) An analysis, to the extent feasible, of any adverse environmental impacts, including cross media impacts or substitute chemicals, that may result from the implementation of the pollution prevention program.

(I) An analysis, to the extent feasible, of the costs and benefits that may be incurred to implement the pollution prevention program.

(e) The state board, a regional board, or a POTW may require a discharger subject to this section to comply with the pollution prevention plan developed by the discharger after providing an opportunity for comment at a public proceeding with regard to that plan.

(f) The state board, regional boards, and POTWs shall make the pollution prevention plans available for public review, except to the extent that information is classified as confidential because it is a trade secret. Trade secret information shall be set forth in an appendix that is not available to the public.

(g) The state board or regional board may assess civil liability pursuant to paragraph (1) of subdivision (c) of Section 13385 against

a discharger for failure to complete a pollution prevention plan required by the state board or a regional board, for submitting a plan that does not comply with the act, or for not implementing a plan, unless the POTW has assessed penalties for the same action.

(h) A POTW may assess civil penalties and civil administrative penalties pursuant to Sections 54740, 54740.5, and 54740.6 of the Government Code against a discharger for failure to complete a pollution prevention plan when required by the POTW, for submitting a plan that does not comply with the act, or for not implementing a plan, unless the state board or a regional board has assessed penalties for the same action.

(i) A discharger may change its pollution prevention plan, including withdrawing from a pollution prevention measure required by the state board, a regional board, or a POTW, if the discharger determines that the measure will have a negative impact on product quality, the safe operation of the facility, or the environmental aspects of the facility's operation, or the discharger determines that the measure is economically impracticable or technologically infeasible. Where practicable and feasible, the discharger shall replace the withdrawn measure with a measure that will likely achieve similar pollution prevention objectives. A measure may be withdrawn pursuant to this subdivision only with the approval of the executive officer of the state board or the regional board, or the POTW.

(j) The state board shall adopt a sample format to be used by dischargers for completing the plan required by this section. The sample format shall address all of the factors the discharger is required to include in the plan. The board may include any other factors determined by the board to be necessary to carry out this section. The adoption of the sample format pursuant to this section is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(k) The state board, a regional board, or POTW may not include a pollution prevention plan in any waste discharge requirements or other permit issued by that agency.

(l) This section prevails over Section 13263.3, as added to the Water Code by Assembly Bill 1104 of the 1999–2000 Regular Session.

SEC. 2. Section 13385 of the Water Code is amended to read:

13385. (a) Any person who violates any of the following shall be liable civilly in accordance with this section:

(1) Section 13375 or 13376.

(2) Any waste discharge requirements or dredged and fill material permit.

(3) Any requirements established pursuant to Section 13383.

(4) Any order or prohibition issued pursuant to Section 13243 or Article 1 (commencing with Section 13300) of Chapter 5, if the



activity subject to the order or prohibition is subject to regulation under this chapter.

(5) Any requirements of Section 301, 302, 306, 307, 308, 318, or 405 of the Federal Water Pollution Control Act, as amended.

(6) Any requirement imposed in a pretreatment program approved pursuant to waste discharge requirements issued under Section 13377 or approved pursuant to a permit issued by the administrator.

(b) Civil liability may be imposed by the superior court in an amount not to exceed the sum of both of the following:

(1) Twenty-five thousand dollars (\$25,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed twenty-five dollars (\$25) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

The Attorney General, upon request of a regional board or the state board, shall petition the superior court to impose the liability.

(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

(d) For purposes of subdivisions (b) and (c), the term “discharge” includes any discharge to navigable waters of the United States, any introduction of pollutants into a publicly owned treatment works, or any use or disposal of sewage sludge.

(e) In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation, and, with respect to the violator, the ability to pay, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

(f) For purposes of this section, a single operational upset that leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(g) Remedies under this section are in addition to, and do not supersede or limit, any other remedies, civil or criminal except that no liability shall be recoverable under Section 13261, 13265, 13268, or 13350 for violations for which liability is recovered under this section.

(h) (1) Notwithstanding any other provision of this division, and except as provided in subdivisions (j) and (k) a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for the first serious violation and each additional serious violation in any period of six consecutive months, except that if no serious violation has occurred in the prior six months, the state board or regional board, in lieu of assessing the penalty applicable to the first serious violation, may elect to require the discharger to spend an amount equal to the penalty for a supplemental environmental project in accordance with the enforcement policy of the state board and any applicable guidance document, or to develop a pollution prevention plan. If the state board or regional board elects to require the discharger to carry out a supplemental environmental project or develop a pollution prevention plan pursuant to this subdivision, a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each additional serious violation in the six-month period that began with the violation that was waived in lieu of the supplemental environmental project or pollution prevention plan.

(2) For the purposes of this section, the following terms have the following meanings:

(A) A “serious violation” means any waste discharge that exceeds the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

(B) A “supplemental environmental project” means an environmentally beneficial project that a person agrees to undertake, with the approval of the regional board, that would not be undertaken in the absence of an enforcement action under Section 13385.

(C) A “period of six consecutive months” means the period beginning on the day following the date on which a serious violation or one of the violations described in subdivision (i) occurs and ending 180 days after that date.

(i) Notwithstanding any other provision of this division, and except as provided in subdivisions (j) and (k) a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more

times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

- (1) Exceeds a waste discharge requirement effluent limitation.
- (2) Fails to file a report pursuant to Section 13260.
- (3) Files an incomplete report pursuant to Section 13260.
- (4) Exceeds a toxicity discharge limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

(j) Subdivisions (h) and (i) do not apply to any of the following:

(1) A violation caused by one or any combination of the following:

(A) An act of war.

(B) An unanticipated, grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(C) An intentional act of a third party, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(D) A bypass of a treatment facility located in the County of Los Angeles during the 2001 calendar year if the applicable waste discharge requirements incorporate a provision for the bypass, and that bypass meets the conditions set forth in Section 122.41 (m)(4) of Title 40 of the Code of Federal Regulations and any more stringent conditions incorporated into the waste discharge requirements and the bypass has been approved by the regional board as meeting those conditions.

(2) (A) Except as provided in subparagraph (B), a violation of an effluent limitation where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300, if all of the following requirements are met:

(i) The cease and desist order or time schedule order is issued after January 1, 1995, but not later than July 1, 2000, specifies the actions that the discharger is required to take in order to correct the violations that would otherwise be subject to subdivisions (h) and (i), and the date by which compliance is required to be achieved and, if the final date by which compliance is required to be achieved is later than one year from the effective date of the cease and desist order or time schedule order, specifies the interim requirements by which progress toward compliance will be measured and the date by which the discharger will be in compliance with each interim requirement.

(ii) The discharger has prepared and is implementing in a timely and proper manner, or is required by the regional board to prepare and implement, a pollution prevention plan that meets the requirements of Section 13263.3.



(iii) The discharger demonstrates that it has carried out all reasonable and immediately feasible actions to reduce noncompliance with the waste discharge requirements applicable to the waste discharge and the executive officer of the regional board concurs with the demonstration.

(B) Subdivisions (h) and (i) shall become applicable to a waste discharge on the date the waste discharge requirements applicable to the waste discharge are revised and reissued pursuant to Section 13380, unless the regional board does all of the following on or before that date:

(i) Modifies the requirements of the cease and desist order or time schedule order as may be necessary to make it fully consistent with the reissued waste discharge requirements.

(ii) Establishes in the modified cease and desist order or time schedule order a date by which full compliance with the reissued waste discharge requirements shall be achieved. For the purposes of this subdivision, the regional board may not establish this date later than five years from the date the waste discharge requirements were required to be reviewed pursuant to Section 13380. If the reissued waste discharge requirements do not add new effluent limitations or do not include effluent limitations that are more stringent than those in the original waste discharge requirements, the date shall be the same as the final date for compliance in the original cease and desist order or time schedule order or five years from the date that the waste discharge requirements were required to be reviewed pursuant to Section 13380, whichever is earlier.

(iii) Determines that the pollution prevention plan required by clause (ii) of subparagraph (A) is in compliance with the requirements of Section 13263.3 and that the discharger is implementing the pollution prevention plan in a timely and proper manner.

(3) A violation of an effluent limitation where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300, if all of the following requirements are met:

(A) The cease and desist order or time schedule order is issued on or after July 1, 2000, and specifies the actions that the discharger is required to take in order to correct the violations that would otherwise be subject to subdivisions (h) and (i).

(B) The regional board finds that, for one of the following reasons, the discharger is not able to consistently comply with one or more of the effluent limitations established in the waste discharge requirements applicable to the waste discharge:

(i) The effluent limitation is a new, more stringent, or modified regulatory requirement that has become applicable to the waste discharge after the effective date of the waste discharge requirements and after July 1, 2000, new or modified control

measures are necessary in order to comply with the effluent limitation, and the new or modified control measures cannot be designed, installed, and put into operation within 30 calendar days.

(ii) New methods for detecting or measuring a pollutant in the waste discharge demonstrate that new or modified control measures are necessary in order to comply with the effluent limitation and the new or modified control measures cannot be designed, installed, and put into operation within 30 calendar days.

(iii) Unanticipated changes in the quality of the municipal or industrial water supply available to the discharger are the cause of unavoidable changes in the composition of the waste discharge, the changes in the composition of the waste discharge are the cause of the inability to comply with the effluent limitation, no alternative water supply is reasonably available to the discharger, and new or modified measures to control the composition of the waste discharge cannot be designed, installed, and put into operation within 30 calendar days.

(C) The regional board establishes a time schedule for bringing the waste discharge into compliance with the effluent limitation that is as short as possible, taking into account the technological, operational, and economic factors that affect the design, development, and implementation of the control measures that are necessary to comply with the effluent limitation. For the purposes of this subdivision, the time schedule may not exceed five years in length. If the time schedule exceeds one year from the effective date of the order, the schedule shall include interim requirements and the dates for their achievement. The interim requirements shall include both of the following:

(i) Effluent limitations for the pollutant or pollutants of concern.

(ii) Actions and milestones leading to compliance with the effluent limitation.

(D) The discharger has prepared and is implementing in a timely and proper manner, or is required by the regional board to prepare and implement, a pollution prevention plan pursuant to Section 13263.3.

(k) In lieu of assessing all or a portion of the mandatory minimum penalties pursuant to subdivisions (h) and (i) against a POTW serving a small community, as defined by subdivision (b) of Section 79084, the state board or the regional board may elect to require the POTW to spend an equivalent amount toward the completion of a compliance project proposed by the POTW, if the state or regional board finds all of the following:

(1) The compliance project is designed to correct the violations within five years.

(2) The compliance project is in accordance with the enforcement policy of the state board.



(3) The POTW has demonstrated that it has sufficient funding to complete the compliance project.

(l) The Attorney General, upon request of a regional board or the state board, shall petition the appropriate court to collect any liability or penalty imposed pursuant to this section. Any liability or person who fails to pay on a timely basis any penalty imposed under this section shall be required to pay, in addition to that liability or penalty, interest, attorneys' fees, costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which the failure to pay persists. The nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of the person's penalty and nonpayment penalties that are unpaid as of the beginning of the quarter.

(m) Funds collected pursuant to this section shall be deposited in the State Water Pollution Cleanup and Abatement Account.

(n) (1) The state board shall report annually to the Legislature regarding its enforcement activities. The reports shall include all of the following:

(A) A compilation of the number of violations of waste discharge requirements in the previous year.

(B) A record of the formal and informal compliance and enforcement actions taken for each violation.

(C) An analysis of the effectiveness of current enforcement policies, including mandatory minimum penalties.

(D) Recommendations, if any, necessary for improvements to the enforcement program in the following year.

(2) The report shall be submitted to the Chairperson of the Assembly Committee on Environmental Safety and Toxic Materials and the Chairperson of the Senate Committee on Environmental Quality on or before March 1, 2001, and annually thereafter.

SEC. 3. (a) Mandatory minimum penalties shall not be assessed pursuant to subdivision (h) or (i) of Section 13385 of the Water Code for any discharge occurring on or after January 1, 2000, if all of the following requirements are met:

(1) The discharge is limited to groundwater from construction dewatering and storm water runoff during construction.

(2) The discharge is regulated by a time schedule order or a cease and desist order issued by the Los Angeles Regional Water Quality Control Board and is subject to interim numeric effluent limitations.

(3) The discharge is in compliance with the interim effluent limitations in the time schedule order or cease and desist order.

(4) The time schedule order or cease and desist order requires that the discharge comply with the numeric effluent limitations in the waste discharge requirements applicable to the discharge by no later than January 1, 2002.

(5) The time schedule order or cease and desist order includes a protocol that ensures that all reasonable and immediately feasible

actions to reduce noncompliance with the waste discharge requirements applicable to the discharge have been taken.

(b) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2002, deletes or extends that date.

